

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

W. C. ROGERS

PLAINTIFF

VS.

CIVIL ACTION NO.: 5:09-cv-00029(DCB)(JMR)

JIMMY WEVER, ET AL.

DEFENDANTS

**DEFENDANTS' OPPOSITION RESPONSE TO
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

COME NOW Defendants¹, by and through their attorneys of record, and respectfully submit this Opposition Response to Plaintiff's Motion for Partial Summary Judgment² as follows:

1. This is a case brought by a former employee of the Public Service Commission of Yazoo City ("PSCYC"), who was terminated for fraudulently accepting money to reconnect customers whose electricity had been disconnected for non-payment. Compounding on his dishonesty and theft from his employer, Plaintiff W.C. Rogers ("Rogers" or "Plaintiff") habitually preyed upon poor people in distress, taking their money and food stamps.

2. After he was terminated from his job as a Meter Reader, it was discovered that Plaintiff was also stealing electricity at his own home, using a stolen electric meter belonging to the PSCYC.

¹ Defendants are: (1) PSCYC Manager Jimmy Wever, (2) The Public Service Commission of Yazoo City, (3) PSCYC Meter Reader Supervisor Allen Williams, (4) Yazoo City Police Officer Tony Johnson, (5) Yazoo City Police Detective Dean Johnson, (6) Yazoo City, Mississippi, (7) PSCYC Commissioner W.N. Nelson, Jr., (8) PSCYC Commissioner W.F. Hawkins, and (9) PSCYC Commissioner Betty Quin. Former PSCYC Commissioner M.P. Holmes has been dismissed from this cause of action by Stipulation of Dismissal. See Pacer Docket Entry No. 23.

² See Pacer Docket Entry No. 69 (Plaintiff's Motion for Partial Summary Judgment) and Docket Entry No. 70 (Plaintiff's Memorandum of Authorities in Support of Motion for Partial Summary Judgment).

3. Plaintiff was subsequently arrested and convicted pursuant to MISS. CODE ANN. §§ 97-25-3 and 97-17-70 on charges of theft of public utilities and receiving stolen property and that conviction was never appealed or reversed.

4. Based upon a Mississippi Department of Employment Security decision awarding him unemployment benefits, Plaintiff's Motion erroneously argues that collateral estoppel requires this Court to enter a judgment that he did not commit the misconduct that resulted in his termination, and that the PSCYC Defendants should be barred from offering evidence of Plaintiff's theft and dishonesty as a defense and/or legitimate non-discriminatory reason for terminating his employment.³

5. Plaintiff's Motion is properly denied because Plaintiff cannot meet his burden of establishing the elements required for the doctrine of collateral estoppel to apply to the instant case. Plaintiff's argument to bar evidence of the theft and dishonesty that led to his termination has previously been considered and clearly rejected by the District Court.

6. In an Opinion by Judge Davidson, the arguments raised by Plaintiff are deemed irrelevant. Mississippi District Courts, and other federal courts, also have held that the difference in the relative burdens of proof between earlier decisions and subsequent civil lawsuits preclude the application of the doctrine of collateral estoppel.

7. In addition to Defendants' contemporaneously filed Memorandum in Support of Opposition Response to Plaintiff's Motion for Partial Summary Judgment, Defendants also offer the following exhibits in support of its Opposition Response:

³ Plaintiff's Motion addresses only the employment aspects of Plaintiff's cause of action against his former employer and the other PSCYC Defendants. Plaintiff's Motion has no impact or application as to any of his claims asserted against Defendants City of Yazoo City or Officer Tony Johnson or Detective Dean Johnson.

- (a) Affidavit of Jimmy Wever, Attached as Exhibit "A";
- (b) Employee Warning Record for W.C. Rogers Dated June 6, 2004, Attached as Exhibit "B";
- (c) Employee Warning Record for W.C. Rogers Dated January 3, 2007, Attached as Exhibit "C";
- (d) Employee Warning Record for W.C. Rogers Dated January 24, 2007, Attached as Exhibit "D";
- (e) Memorandum by Garrette Scott, Jr. Dated June 22, 2007, Attached as Exhibit "E";
- (f) Employee Warning Record for W.C. Rogers Dated June 25, 2007, Attached as Exhibit "F";
- (g) Note Regarding November 20, 2007 Call from Trish Reed, Attached as Exhibit "G";
- (h) Affidavit of Michael Wilson, Attached as Exhibit "H";
- (i) Letter From Jimmy Wever to W.C. Rogers Dated June 3, 2008, Attached as Exhibit "I";
- (j) Minutes of June 10, 2008 Meeting of PSCYC ,Attached as Exhibit "J";
- (k) Affidavit of Brenda J. Harelson ,Attached as Exhibit "K";
- (l) Cut-Off Notice, Attached as Exhibit "L";
- (m) Police Report dated June 17, 2008 Regarding Theft of Electricity at 916 White Avenue, Attached as Exhibit "M";
- (n) Letter From Jimmy Wever to W.C. Rogers Dated June 20, 2008, Attached as Exhibit "N";
- (o) Minutes of July 8, 2008 Meeting of PSCYC, Attached as Exhibit "O";
- (p) Letter Dated September 19, 2008 to MDES Appeals Department, Attached as Exhibit "P";
- (q) Yazoo Police Department Offense Reports of Theft of Public Utilities and Receiving Stolen Property; Attached as Exhibit "Q";
- (r) Yazoo City Municipal Court Proceedings of Criminal Charges Against W.C. Rogers, Attached as Exhibit "R";
- (s) Records Affidavit, Attached as Exhibit "S".

For the reasons discussed above and in Defendants' contemporaneously filed Memorandum in Support of Opposition Response to Plaintiff's Motion for Partial Summary Judgment, Plaintiff's Motion for Partial Summary Judgment is properly denied.

Respectfully submitted,

PHELPS DUNBAR, LLP

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I, MARK FIJMAN, do hereby certify that I have this date electronically filed the foregoing *RESPONSE* with the Clerk of the Court using the ECF system which sent notification of such filing to:

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ATTORNEY FOR PLAINTIFF

THIS, the 26th day of February, 2010.

/s/ Mark Fijman
MARK FIJMAN